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THE DECLINE OF PERSONAL LIBERTY IN AMERICA.

In a recent debate in the House of Representatives between two well known members, which involved their respective positions on a proposed amendment to the Federal Constitution, prohibiting the manufacture and sale of intoxicating liquors it was said by the gentleman who favored prohibition: "I ask if there is any other question you can name that is of greater public moment than the question whether our people are to be forever debauched * * * The liquor interest on one side and the temperance, prohibition and moral forces on the other have made it a national question, and he cannot escape the fact." Whether the question is a national one or not, in my judgment, there is a question of far greater moment. That is, whether individual liberty is still to obtain in America.

It may seem remarkable that less than one hundred and forty years after the Declaration of Independence and twelve years less than that time after the adoption of the Constitution of the United States the question I have propounded should be still open for discussion. Nevertheless, unless I am utterly mistaken there is now a strong tendency in courts, in Legislature and, worst of all, in the people themselves, to disregard the most fundamental principles of personal rights. Judicial decisions are made, statutes are enacted and doctrines are publicly advocated which, when I was young, would have shocked our people to the last degree. In those days liberty was deemed to be the right of the citizen to act and live as he thought best, so long as his conduct did not invade a like right on the part of other. Today, according to the notion of many, if not most people, liberty is the right of part of the people to compel the other part to do what the first part thinks the latter ought to do for its own benefit. It has been said that the great misfortune of the day is the mania for regulating all human conduct by statute, from responsibility for which

few are exempt, for those who resent as paternalism or socialism legislative interference with their own affairs are often most persistent in the attempt to regulate the conduct of others. That there has been of late years a reaction from the faith in individualism, which was almost universal in free countries in the middle of the last century, is certain. The consideration, however, of the respective merits of individualism and of collectivism or an inquiry into the proper limits for the application of the doctrines of either faith would raise entirely too many and too broad questions to be the subject of discussion in an address like this, and that discussion I shall not essay, though I am frank to admit that having been brought up in the then substantially universally accepted faith in the maxim that "Who is governed least is governed best" it is hard for me, at my age, to divest myself of my early predilections. I shall confine myself to calling your attention to certain things which I think might well excite alarm even in the minds of those whose faith in the righteousness and efficacy of State action is the greatest if they still have some regard for private rights.

I had always believed that the subordination of the military power to the civil was an axiom in a free country, and the first cases to which I shall call your attention involve a repudiation of that principle. They arose in the State of West Virginia in 1912. There had been great violence and disorder during a strike of the coal miners, and the law had been openly defied. The Governor of the State suspended the writ of habeas corpus and declared by proclamation a state of war to exist in a portion of the county of Kanawha. The civil courts of the country were open and unobstructed, the county town in which they were held being outside of what the courts of that State have called the "Martial zone." The petitioners had been tried and sentenced by Military Commission. They sought their release on *habeas corpus,* which was denied them by the Supreme Court of the State by a divided court. The Constitution of West Virginia prescribed: "1. The provisions of the Constitution of the United States, and of this State, are operative alike in a period of war as in time of peace, and any departure therefrom, or violation thereof, un-

der the plea of necessity, or any other plea, is subversive of good government, and tends to anarchy and despotism.

"The military shall be subordinate to the civil power; and no citizen, unless engaged in the military service of the State, shall be tried or punished by any military court for any offense that is cognizable by the Civil Courts of the State."

The first Constitution of West Virginia, enacted in 1863, provided: "The privilege of the writ of *habeas corpus* shall not be suspended except when in time of invasion, insurrection or other public danger, the public safety may require it." But by the Constitution subsequently adopted, which was in force at the time of the occurrences which I narrate, the qualification "except when in time of invasion, insurrection or other public danger, the public safety may require it" was omitted, so that the provision in that instrument read "The privilege of the writ of habeas corpus shall not be suspended."

Despite these constitutional provisions, in an opinion delivered by the majority of the court, which will be found reported in 71 West Virginia, page 519, the following propositions were declared, which I cite from the first case (Nancy and May *v.* Brown): "The provisions against the suspension of the writ of *habeas corpus* and trial of citizens by military courts for offenses cognizable by the Civil Courts cannot, in the nature of things be actually operative in any section in which the Constitution itself and the functions of the courts have been ousted, set aside or obstructed in their operation by an invasion, insurrection, rebellion or riot. *In such cases, the constitutional guaranties of life, liberty and property have ceased to be operative and efficacious.*"

"Power to establish a military commission for the punishment of offenses committed within the military zone is challenged in argument; but we think such a commission is a recognized and necessary incident and instrumentality of martial government. A mere power of detention of offenders may be wholly inadequate to the exigencies and effectiveness of such government."

"That the courts of Kanawha County sit within the limits of that county and outside of the military zone does not pre-

clude the exercise of the powers here recognized as vested in the executive of the State."

"It seems to be conceded that if the governor has the power to declare a state of war, his action in doing so is not reviewable by the courts. Of the correctness of this view we have no doubt. The function belongs to the executive and legislative department of the government, and is beyond the jurisdiction and powers of the courts."

The court did suggest this: "We are not to be understood as saying that there would be a lack of remedy in such case. The sovereign power rests in the people and may be exerted through the legislature to the extent of the impeachment and emoval from office of a governor for acts of usurpation and ther abuses of power."

In the next case, that of *Ex parte* Jones, the petitioners were arrested outside of the military zone and turned over to a military commission for trial. It was from the imprisonment imposed by such commission that they sought relief. In this case also was the petition denied and the court adhered to its declaration in the first case, saying: "As a premise to this conclusion, the power of the governor to declare a state a war, to use the military forces to suppress insurrection or rebellion or repel invasion, and to establish a military commission for the punishment of offenses committed within the military zone and by its judgment impose imprisonment, notwithstanding the constitutional guaranty of subordination of the military to the civil power, the privilege of the writ of *habeas corpus* and the right of trial by jury in the Civil Courts for offenses cognizable by them, and the conclusiveness of the executive declaration of a state of war were asserted. The power and authority of the court to interfere with the executive arm under such circumstances was denied. We also held and asserted this right and power in the executive as to a city, district or county of a State, notwithstanding the courts were open and sitting in other portions of the county."

The court further added in this case, on a point not involved in the first: "This (the return to the *habeas corpus*) sufficiently charges them with having wilfully given aid, support and information to the insurgents, the enemy, in a time of war,

insurrection, and public danger, and § 6 of chapter 14 of the Code confers upon the governor power to apprehend and imprison all such persons. Such acts may be done either inside or outside of the military district. Nothing in the terms of the statute limits the exercise of this executive power of apprehension and imprisonment to persons within the military district, and it is obvious that persons outside of such district may do as much or more than persons inside of it to defeat executive action, looking to the suppression of the insurrection or rebellion."

Under these decisions the life and liberty of every man within the State would seem to be at the mercy of the Governor. He may declare a state of war whether the facts justify such a declaration or not, and that declaration is conclusive upon the courts. If he declares only a portion of the State to be in a state of war, under the decision in the second case a person in any other part of the State, however, distant, may be arrested and delivered to the military authorities in the martial zone, and his fate, whether liberty or life, depend on the action of a military commission, for I know of no principle which authorizes a military commission to impose the punishment of imprisonment that would not equally authorize the imposition of the punishment of death. Under that doctrine, should armed resistance to the Federal authority justifying a suspension of the writ of *habeas corpus* occur in Arizona, a citizen could, on a charge of aiding the insurrection, be dragged from his home in Maine and delivered to the military authorities in Arizona for trial and punishment. The remedy suggested by the learned court, of impeachment by the Legislature, would hardly seem of much efficacy. By impeachment the Governor could only be removed from office. He could not be further punished, however flagrant his oppression may have been, except by a perversion of the criminal law, for if the doctrine of the courts is correct he would not have exceeded his legal power. The Governor might imprison or execute the members of the Legislature, or even the learned judges of the Supreme Court themselves. Frankly, I do not regard such a danger as likely, for I have great confidence in the common sense of the American people, and I imagine that

if such a course were attempted not even the devotion of those learned judges to the principles of law they had declared would induce them to voluntarily surrender life or liberty and that in their resistance they would be supported by the mass of the people. Still, it is an unfortunate condition of the law that redress from wrong can only be achieved by violation of the law.

These decisions exalt the military power beyond any height hitherto known in this country. They assert the power of the military at the uncontrolled discretion of a single man to dispose of the life and liberty of any person within the State, not by way of detention till the termination of an insurrection nor where life is taken in the actual clash of arms, but purely as a punishment for acts which may not be offenses at all by the law, or, if offenses, subject to slight penalties. The case of Moyer *v.* Peabody,[1] in the Supreme Court of the United States, gives no support to such a proposition. It justifies only "temporary detention to prevent apprehended harm." Yet, I am by no means sure that a majority of the people, indignant at the many outrages and crimes committed by strikers, do not approve the decisions which I have criticized, forgetful of the precedent they establish. How different was the action of the Supreme Court of the United States at a time when, by reason of the enormous loss of life and expenditures of money, caused by the Civil War, just then concluded, the Nation labored, not unnaturally under great excitement and, possibly, some animosity, against its late opponents. In the Milligan case[2] the court discharged a citizen of Indiana, who had been convicted by a military commission, sitting in that State, of aiding the enemy, and sentenced to death. That great court decided that the Constitution of the United States was a charter for the government of the country in times of war as well as in peace, and that except where actual clash of arms took place or the civil courts were closed the constitutional safeguards always protected the citizen from loss of life or liberty except by the verdict of a jury. Answering the plea of necessity, the

1. 212 U. S. 78.
2. 4 Wall. 2.

court said: "If this were true it could well be said that a country preserved with the sacrifice of the cardinal principles of liberty is not worth the cost of preserving." Every true patriot, every lover of civil liberty and constitutional government should rejoice that at the time of the greatest popular excitement one branch of the government was found strong enough and courageous enough to interpose the Constitution as a shield to protect the life of an humble citizen, even though, perhaps, a guilty one.

The lust for military intervention in civil affairs grows on what it feeds upon. It is becoming the common practice, in the case of any great disaster, such as fire or flood, to call out the military. Three years ago the State Capitol was partially destroyed by fire. As soon as the fire had been extinguished the building was guarded by soldiers in uniform and armed, while scrubwomen and cleaners, the only persons whose immediate service were requisite, did not appear till a day later. Finally, in this very month, in the State of Oregon, a young lady, acting as secretary to the Governor, placed the town of Copperfield under martial law and the control of the military because the civil authorities had failed to close the saloons as required by law. Thus, one violation of liberty and law leads to another till the practice becomes common, and I imagine that a majority, of the prohibitionists at least, will be found to approve of the practice as long as it is exerted to accomplish ends which they desire. If it be true that in this country order cannot be maintained and the law enforced by the civil authorities, but we must constantly resort to military force, our boast of freedom is but idle and, at least, we should refrain from the expressions of indignation in which we have recently been indulging at the invasion of the rights of civilians by the army in Germany. The law in England is the reverse of that declared in West Virginia. Professor Dicey says: "This kind of martial law is in England utterly unknown to the Constitution. Soldiers may suppress a riot as they may an invasion. They may fight rebels as they may fight foreign armies, but they have no right to inflict punishment for riot or rebellion." [3]

3. Law of the Constitution, 288.

Liberty of the press as defined by Alexander Hamilton, whose definition was approved by Chancellor Kent, writing for the Supreme Court of this State, of which he was then a member, consists "in the right to publish with impunity truth with good motives and for justifiable ends, whether it respects government, magistrates or individuals." [4] The Constitution of the State of Minnesota ordains: "The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right."

The Legislature of that State enacted a statute in relation to the execution of capital sentences, which prescribed: "No account of the details of such execution beyond the statement of the fact that such convict was on the day in question duly executed according to law, shall be published in any newspaper."

In the case of State *v.* Pioneer Press Company [5] the defendant was indicted and convicted of publishing an account of an execution. The terms of that account do not appear in the report of the case, but its general character can be gathered from this statement in the opinion of the court: "The article in question is moderate, and does not resort to any unusual language, or exhibit cartoons for the purpose of emphasizing the horrors of executing the death penalty." Despite this, the learned court held: "But if, in the opinion of the Legislature, it is detrimental to public morals to publish anything more than the mere fact that the execution has taken place, then, under the authorities and upon principle, the appellant was not deprived of any constitutional right in being so limited."

In answer to the appellant's argument that there were no constitutional limitations upon the press unless the subject matter be plasphemous, obscene, seditious, or scandalous in its character, the learned court said: "This is altogether too restricted a view. The principle is the same, whether the subject matter of the publication is distinctly blasphemous, sedi-

4. People *v.* Croswell, 3 Johns. Cases, 394.
5. 100 Minn. 173.

tious, or scandalous, or of such character as naturally tends to excite the public mind and thus indirectly affect the public good." With the greatest deference to the learned court I insist that the doctrine asserted in this opinion is fatal to the liberty of the press. If it is a correct exposition of the law, the famous decree of the Star Chamber forbidding unlicensed printing, held up to execration in free countries for centuries, has been the subject of unmerited obloquy.

Surely, if government can prohibit the publication of anything that tends to excite the public mind, it is much wiser that nothing should be published that has not been properly censored. I believe that on many subjects it is right that the public mind should be excited, despite of whatever disadvantage may come from that condition, and I had supposed that it was the inalienable right of the press to excite the public on the subject of any wrong, so that that wrong might be redressed. Personally, I believe in capital punishment, but many people entertain a contrary opinion. If an execution is, in truth, attended with horrors, the opponents of capital punishment have an undeniable right to describe those horrors as an argument against the infliction of the death penalty. Moreover, may not one who believes in capital punishment, but is shocked at the method in which it is executed, state the facts, so that the method may be changed? Or, if the scandal in the execution be caused by the incompetency, brutality or intoxication of the officer charged with carrying out the sentence of the court, may not the facts be published for the very purpose of exciting the public and ensuring the removal or punishment of the delinquent official? How can redress against misgovernment be effectually obtained except by exciting the public mind? Further comment on this legislation would seem unnecessary.

By the same learned court it has been recently decided that an action will lie against a rich man who opens a barber shop with the motive, as charged in the complaint, of injuring the plaintiff, a barber in business at the time, and not for the sake of the defendant's own profit.[6] If the commis-

6. Tuttle *v.* Buck, 107 Minn. 145.

sion of an act, unquestionably lawful, is to render a person liable to respond in damages to any competitor affected thereby, by subjecting the motive of the actor to the scrutiny and determination of a court or jury, there is very little safety left to the indrvidual in the ordinary pursuits of life. Nor do I think that ultimately the decision will help the poor man. If the defendant's action in the case referred to hurt the trade of one barber it certainly gave employment to another. An automobile manufacturer has recently admitted his employees to share in the profits of his business, to the extent of millions. If the doctrine of the case referred to is sound, I do not see why other manufacturers of motor cars may not restrain the action of the generous employer on the claim that his real motive is not to benefit his employees but to injure his competitors in trade, by exciting discontent among their workmen leading to strikes. Of course, the plaintiff must satisfy the court or jury as to the motive of the party sued, but it is an easy transition from the premise that the defendant, for some reason, ought not to have taken the action complained of, to the conclusion that therefore he must have acted with a malicious motive.

Looking in the dictionaries of recent years we find a new word, "Eugenics," defined as the science of improving the human race by securing better offspring. It is urged that for many years it has been the constant endeavor to improve the breed of animals, but that no effort has been made to improve that of human beings. The professors of the new science seek to accomplish this result by restraining the procreation of offspring by persons suffering from transmissible diseases or physical defects. So far as they endeavor to arouse individual conscience on the subject, doubtless, their efforts are laudable, though there seems to be great difference of opinion among experts upon the question of what physical weaknesses are the subject of inheritanc by children. But, in accord with the fashion of the day, these gentlemen were not satisfied to advance their cause by argument, but have sought and obtained legislation, in at least two States, which forbids marriage without the certificate of a physician to the physical well-being of the parties. If marriage were a necessary condition precedent

to the procreation of offspring, there would be some sense in the legislation, however objectionable on principle it may be, but as it is not, the legislation is simply silly. Restraints on marriage are not new in the world. The only result has been, where such restraints have prevailed, that men and women have formed unions without the sanction of either law or religion, and to the credit of human nature, they have, as a rule, been as constant to the obligations of those unions as if there had been legal marriage. The continence of the parents, however, was unable to save their innocent offspring from the stigma of illegitimacy. If the legislation spoken of had this result it would be wicked as well as silly, but as it is so easily evaded by going to another State to perform the marriage ceremony, I have characterized it only as silly.

In the domain of commercial and industrial activities have been the greatest attempts to restrain individual activity and liberty. The members of nearly every vocation have sought, and, often secured, in their own interest, legislation which invades the rights of the rest of the community and, at times, the rights of some of their own members. We all know that much of the so-called labor legislation has assumed to forbid the pursuit of particular trades except to persons who have passed examination and obtained license, the real object of such legislation being not to protect the public but to limit the number who could follow the particular trade. Even the barbers had at one time a statute forbidding any one to cut hair or shave for customers unless he had been examined by a board of examiners, composed in part of barbers, and admitted to practice. That law no longer appears on the statute books. But this disposition usually termed trade unionism, and justly condemned, is by no means confined to the trades. The same spirit seems to prevail in nearly all vocations, and our State has been one of the worst of offenders in this respect. The famous Tenement House Cigar Act[7] prohibited the manufacture of cigars in any tenement house. As pointed out by the courts, its provisions were such as to show plainly that it was in no sense a statute for the protection of health, but en-

7. Matter of Jacobs, 98 N. Y. 99.

acted solely for the benefit of large manufacturers, who sought to stifle competition. Every one familiar with the public affairs of that day knows that this was the true purpose of the act. When oleomargarine was first made the farmers of the State, not content with legislation to prevent fraud on the public in passing off the article as butter, obtained the enactment of a statute which absolutely prohibited its manufacture, though it was indisputably shown that oleomargarine was a wholesome article of food.[8] Some ingenious and energetic storekeeper sought to increase his sales by giving prizes or premiums to purchasers of goods in excess of a certain quantity or value. His plan must have been successful, since forthwith his business rivals had a statute passed forbidding giving a prize on the sale of goods, and making the act a misdemeanor. The statute was sought to be upheld on the claim that the gift of prizes induced customers to buy more than they needed and to spend too much money, though how this justified interference by the State I am at a loss to imagine. Of course, the real object of the statute was to stifle an ingenious method of doing business, in the interest of rivals in that business.[9]

The local storekeepers in some small places thought their business injured by transient retailers, who advertised their goods as bankrupt or assigned stock, or as damaged by fire. So they had a statute enacted which required transient dealers, in cities of the third class, so advertising, to take out licenses for the privilege of selling their goods, the cost of which to be fixed between twenty-five and one hundred dollars a month. That the statute was solely directed against the advertising was plain from the fact that its requirements applied only to itinerant merchants so advertising, and this, whether the advertisement was true or false, while others not advertising, were exempt.[10]

Nor are the professions free from the same spirit. Surely, there is no nobler, none so charitable and unselfish a profes-

8. People *v.* Marx, 99 N. Y. 377.
9. People *v.* Gilson, 109 N. Y. 389.
10. People ex rel. Moskowitz *v.* Jenkins, 202 N. Y. 53.

sion as that of the physician. Yet, the persecution which some of the physicians seek to inflict on the Christian Scientists is discreditable. Personally, when ill, if compelled to make a choice, I prefer the attendance of the physician to that of the minister, but others may entertain a different view. It took centuries of time and untold human suffering to establish the right of a man to be saved or damned in the next world in his own way. And the right of an adult, sane, person to be cured or killed in this world, in his own way, seems to me to be equally as great, unless his disease, being contagious, endangers others, and even in that case it is difficult to see how the attendance of the Christian Scientists can increase the danger. Doubtless, the requirements of technical education and skill prescribed as conditions for a license to practice as a physician are proper. In default of such requirements we would be subject to be imposed upon by impostors and charlatans. But no one, however, can be deceived by the Christian Science reader except as to the extent of the special intervention of the Deity in human affairs. As to that, a man has a right to believe what he chooses, and the further right to act on his belief. In all Christian churches prayers are offered for the recovery of the sick, and all decent Christians, Friends possibly excepted, believe in supporting their clergymen. The Christian Scientist has exactly the same right to be paid for his service. The sect seems to be unpopular and to have few defenders. That is only a greater reason why we should see to it that its rights be respected.

At this point permit me to digress a moment to call attention to an evil which is closely akin to the subject of my address, the disposition to make all human short-comings crimes, and subject to excessive punishment. Everyone familiar with the history of the subject is shocked at the brutality of the old English Penal Law, which had over two hundred capital felonies. The list grew to that excessive number gradually but continuously by successive statutes. When any evil was discovered it was made a felony without the benefit of clergy. The spirit that prevails at the present time is exactly the same as that that led to the English law. In this State we have now over two hundred felonies, though none capital except treason

and murder and over double that number of misdemeanors. Counting crimes as given in the index to the Penal Code, their number is nearly twice as great as that stated, but as some are only duplications I have reduced my estimate that it may be well within the limits of the fact.

No trade or calling seems so limited, no society or association so insignificant, the advocates of no hobby or nostrum so few or so wanting in influence as to be denied the privilege of having a new misdemeanor created. For years, feeding or sheltering sparrows constituted a crime in this State, punishable by imprisonment not to exceed a year or fine not in excess of $500 or both. That law no longer disgraces our statute books. But even to-day we find notices in the street cars that anyone spitting on the floor is subject to the punishment I have mentioned. Spitting in public places is, doubtless, a dirty habit and endangers the health of others. It may well be punished by proper penalties, but it seems unreasonable that an offender should, for such an offence, be liable to a year's imprisonment and a fine of $500, the latter, if not paid, to be served out at the rate of a dollar a day. The fact that no court would impose such a penalty only emphasizes the impropriety of the law. But that is the standard punishment for misdemeanors, and misdemeanors have become so common that there is now speculation among the curious as to how many the average, decent citizen will ordinarily commit in a day.

It is true that many statutes to which I have referred have been held invalid by the courts, but that does not go to the root of the evil, which lies in the attitude of the public towards these violations of private right, that of approval by part of the community, of indifference on the part of the rest. The spirit of the public is well shown in the matter of taxation. John Marshall said that the power to tax is the power to destroy. This is especially true where constitutional restraints on the exercise of the power are few, as in the case in most States as well as in the nation at large. The primary purpose of the power of taxation is to raise money to support the government. People may well differ how taxation should be adjusted to best accomplish that purpose, with the least interfer-

ence with commerce or hardship on the citizen. But now there is a strong tendency to pervert the taxing power to accomplish ends wholly foreign to that for which it is granted. The first marked instance of this character was the imposition fifty years ago of a tax of 10 per cent, a year on notes of State banks. The tax was not expected to be paid but was intended to destroy the issue of such notes, the right to issue which had been previously upheld by the highest courts. The Supreme Court of the United States sustained the tax, doubtless, correctly, for the court could not review the motives of Congress in its enactment. The precedent was too valuable to ingenious minds to be overlooked, and constantly suggestions are made to get rid of obnoxious things by taxation. The practice is fraught with infinite danger to property and personal rights. Yet, its adoption in certain directions is openly advocated. Complaints are constantly made to the press of the great signboards that are seen along the line of railroads and the highways, of the offense they occasion to travelers. It is urged to get rid of these by taxing them out of existence. The mere suggestion of such measure seems to me dishonest in the highest degree. The land belongs to the owners of the adjacent farms, who derive a profit of some kind from the signs, to which they are as much entitled as the profit to be gained from the crops which they raise from the ground. The suggestions are also eminently unwise at this time when many persons demand that the taxing power be used to remedy the inequalities of fortunes and to achieve "social justice." The signs may offend the aesthetic taste of some travelers, but it must be remembered that discontent and envy are so prevalent to-day that any evidence of luxury, or even of comfort, on the part of the well-to-do, is still greater cause of offense in the sight of those who possess nothing of the kind. The latter are in the majority, and if the rights of property are to be subordinated to the criteria of taste, the taste of the majority is entitled to prevail.

Some years ago, to end the corruption that had prevailed among electors, a radical change in the method of voting at elections was effected by a law which prescribed an official ballot and formulated in great detail the manner in which it

should be voted. Even then, attention was called to evils to which the new law might give rise. Danger of some of them time has proved to be well founded, as, for example, that under the law an election may depend more on a court order, granting or refusing to a candidate a place on the official ballot, than on the desires of the electors. Since its original enactment the law has been repeatedly modified, and every change has been in the direction of imposing new restrictions on the voter. Finally, we have a direct primary law, which requires all nominations by political parties to be made by the direct vote of its members. Whether the better method of selecting candidates is by convention or by direct vote may be the subject of difference of opinion, but that is a question for the members of the party, not for the legislature to decide. It seems to me that the law in this respect is not only a violation of the individual right of the voters, but a clear impertinence on the part of public officers, the servants, to dictate to their masters, the electors, on what principles those servants shall be chosen by their masters. Conventions are permitted by the law to exercise the functions of declaring the platform and policies of the party, but without any power to require, either directly or by implied obligation, support or approval of such platform by the nominees of the party, who may openly repudiate it, as their nominations may have already been made. Practically, the statute reduces a party to a mere combination of electors to obtain the public offices. This may have been, to some extent, the party tie in the past, but for the first time it has been made the dominant one by law.

For some time there has been constant agitation to amend the form of the official ballot at a real election so as to arrange the names of candidates alphabetically, and not in party groups. Experience shows that the great majority of voters desire to vote a straight party ticket. This desire on the part of the voters may be wrong, but it is clearly within their legal rights. The proposed change in the form of the ballot is advocated because it will tend to diminish or destroy this practice. In my opinion, the only honest legislation is that which is directed to affording the elector the best means of casting his vote as he desires, whether the motive that dictates that vote

is such as we approve or not, so long as it is not illegal or immoral.

I have not in these remarks considered laws which prohibit the sale of intoxicating beverages, because that subject has been discussed for years and all are familiar with the arguments on each side of the question, to which I cannot hope to add anything of force. I shall merely say that great as are the evils caused by the improper or excessive use of stimulants, people who take wine or liquor in moderation, without injury, at least, to others, cannot be expected to surrender their right so to do. At any rate, they will not, despite any laws to the contrary that may be made. The history of such legislation in the States where it has been enacted shows that it has failed to accomplish its object. The result is that law habitually disregarded breeds contempt for law.

I have now recited a number of cases in which, in my judgment, clear violations of personal liberty have been either accomplished or attempted. Many others might be given and, possibly, those which I have narrated may not be the most flagrant. But they are fair examples of the tendency of the times. I must not be misunderstood. I do not criticise laws for safeguarding the persons of operatives in the various callings nor for the protection of the health, whether of the working classes or of others. It is also apparent that the present concentration of numbers of people in a single city, to an extent unknown and unexpected half a century ago, requires police regulations or restrictions of individual rights that would have been unjustifiable at an earlier period. When we have twelve story buildings with only one story streets it is plain that mere numbers would prevent all locomotion on the streets unless locomotion was strictly regulated. Density of population, doubtless, requires new regulation of private rights in other respects. Of all these I approve, but I protest against two tendencies of the times. First, to disregard as legal technicalities, on the plea of necessity, the constitutional safeguards for the security and the protection of the individual citizen as against the government, and second, to restrict the liberty of action of the individual, when the effect of such ac-

tion is confined to himself, except in the sense so often urged, that the community is interested in whatever concerns the individual, in which there is no force, as the community is simply the aggregation of individuals. Nor, do I complain of democracy. On the contrary, if I must be deprived of my liberty and rendered miserable, I am sufficient of an utilitarian to desire that my misery shall contribute to the happiness of the greatest number. But I protest against being compelled to surrender my liberty at all.

To those, if there are any such at this day, who share these views, I have but this to say, that the only way in which our own conduct can be secured against the inroads of paternal or socialistic government is to be alert to protect the conduct of others and to condemn violations of private rights equally whether the violation is of our rights or of those of others.

EDGAR M. CULLEN,
in the *American Law Review.*